

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:04 CR 3091
)	
v.)	
)	
)	
MARK KILPATRICK, MICHAEL ROSS,)	MEMORANDUM AND ORDER
)	
Defendants.)	

Counsel in this case telephoned my office last week concerning the defendant's desire to be terminated early from his three-year period of probation. I advised counsel I would consider the telephone inquiry as an oral motion to reconsider my earlier denial of a similar motion¹, and gave each of them until last Friday to provide me additional comments on the motion by letters. Both parties have done so; defendant's comments were in the form of a faxed letter from the defendant, via defense counsel. In addition, I received through counsel a faxed letter from co-defendant Ross, requesting early release from his like period of probation; I shall therefore address his letter as a motion, as well.

Although the U.S. Probation office officially takes no position in the matter, the court has earlier been advised by the assigned officers that both defendants have completed their

¹ Defendant Kilpatrick filed a motion for early discharge from probation in May, 2005 which I rejected as "premature" because the defendant had then served less than six months of his three-year term. See, Filings 46 and 48. In addition, his supervising probation officer requested his early discharge from probation in March, 2006. I denied that request on March 14, 2006, saying, *inter alia*, he had been on probation "less than half of the ordered term." See filing 51.

community service obligations and paid their respective fines and special assessments. Further, both have been reported to be good candidates for early termination of probation.

The government strenuously opposes early release from probation and argues that the condition of probation which prohibits the defendants from hunting is the stiffest penalty of those imposed by the court. According to the government's letter, ". . . the component of the defendant[s'] sentence[s] which most effectively sends a message to other hunters who might be tempted to engage in similar behavior is the multi-year prohibition against hunting." The government also argues that the defendants have been required to "miss" only one hunting season, since their probation did not begin until December 7, 2004. "[Defendant Kilpatrick] has never accepted responsibility for his crime, and if he is able to 'buy' his way out of his sentence by the payment of a fine and performing some community service hours, he will have largely evaded that aspect of his sentence which is most directly targeted at his criminal conduct. This he should not be permitted to do."

In my March, 2006 order I stated that, in addition to the defendant Kilpatrick having then served less than half of his ordered term of probation, "I am not inclined to reduce or eliminate the hunting ban previously ordered."

Defendant Ross has not previously formally requested discharge from his probation. His letter advises that his probation officer also has indicated that he is "an excellent candidate for early release because of my cooperation and timely completion of my punishment." He also reports that since his completion of community service hours in this matter, in which he raised over

\$2,500 for the Breast Cancer Society, his wife has been diagnosed with bone cancer.

While I commend the defendants for their early completion of their financial and community service obligations. I have been given no reasons to change my statement made in March. I agree with the government that in this case the hunting ban is the most effective punishment. I shall not lift it until early 2007 at the earliest. At that point defendants will have completed two full years of probation and at least most of two hunting seasons. If then defendants have continued their good records and not violated their conditions, I can consider an early discharge.

IT HEREBY IS ORDERED: The defendants' motions for early release from probation are both denied.

DATED May 4, 2006

BY THE COURT:

s/ *David L. Piester*
United States Magistrate Judge